



## The Legislative Authority and its Role in the Promotion and Protection of Human Rights

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**Abstract:** The parliament, as the sole legislative body of a state, stems from the people's need to lay the foundations of democracy and to participate in decisions that affect them. In the first decade of transition to democracy, the Chamber of Deputies and the Senate adopted an impressive number of laws and regulations, as if to compensate for the communist period, in which the legislative flow was low. This profusion of laws was intended to reform on democratic bases, the Romanian society, strengthen state institutions and provide guarantees for the respect of fundamental human rights. The Romanian Constitution revised in which 2003 establishes the concrete way in which the Parliament controls the Government's activity and public administration authorities or cooperating with them, the control which aims to, an effective protection of citizens' rights. The Parliament has a key role in drafting laws, in which control and activity monitoring of various institutions and authorities of the central public administration and internal regulations in which ensure compliance with European or international. It is in this context, we emphasize a more rigorous control of the activity of this institution, on the existence of a form of Parliament responsibility towards citizens who elected him.

**Keywords:** legal and political institutions; parliamentary oversight; accountability to Parliament

### 1. Introduction

In the opinion of most historians, the document that was the basis of the parliamentary institution in the Romanian Principalities was the Organic Regulation adopted in 1831 in Moldavia and Wallachia.

On the 28<sup>th</sup> of February 1938, Carol the second addressed the Proclamation to the country, by which he announced his subjects that he wishes for the new constitution to become the foundation for increasing the authority and the government's rights, and the number of senators and deputies to be reduced. And so, with the royal dictatorship's instauration, the Parliament's role was diminished,

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being deprived of its main tasks. This way, the citizen's rights not only that they were not protected anymore, but also suffered an amputation.

Throughout the communist period we can not speak of human right's protection at a national level by the "legislative body", being a period in which the most fundamental rights were considered privileges, a period in which all the rights that already existed in the legal international documents, were ignored by the political regime and constantly violated.

Analyzing the role of the legislative body in the communist state, taking into account its wide meaning which includes the state's behavior towards its citizens, it is obvious that this represented a positive concept in the Romanian communist system. (Focșeneanu, 2009, p. 213)

Therefore, from authorizations regarding the right to own a car to the obligation to participate in manifestations that promoted the cult of personality, everything was regulated, including the fields that relate in an intimate way to the freedom of conscience of a person, namely art, religion and culture. Related to this trend of the socialist state to subdue everything using the law as a form of control, Frederic Bastiat argues, 'Socialism, like the ancient ideas from which it rises, makes a confusion between the state (or the governing) and society. The communist regulation enacted through normative acts almost all areas of human events, from the political, to social and cultural, but even the family ones. (Batista, 1990, p 32)

Communism's fall in 1989 meant Romania's return to democracy and to the consecrated, bicameral Romanian parliamentary system. In the post-December Romania, the Parliament had an important role in the democracy consolidation process, of the state and of transition towards the market economy. (Ilie, & Ilie, 2007, p.115)

After this period, in our country was initiated an extensive process of introducing a political system that would be based on the western constitutional democracy principles in which the institution of Parliament would have a fundamental role. The 1991 constitution organizes the public authorities according to the principle of separation powers in the state.

In the first decade of transition to democracy, the Chamber of Deputies and the Senate have adopted an impressive number of laws and normative acts, as if to compensate the communist period in which the legislative flux was low. This legislative abundance was meant to reform on democratic bases, the Romanian

society, to strengthen the state institutions and provide guarantees for the respect of fundamental human rights.

Therefore, the Parliament, as the sole legislative body of a state, appeared from the people's need to establish the bases democracy and to participate in decisions that affect them.

The emergence of the Parliament as an fundamental politico-legal institution in an organized society in the state, was actually a natural reaction against the despotism and tyranny of the specific feudal absolutism. The emergence of the Parliament must be regarded as expressing the human requirement for participating in the making of laws, participation in which is actually the first of the laws of democracy. (Muraru, & Tanasescu, 2009, p 151)

## **2. Parliamentary Control Over the Executive and Government-Purpose and Means to Protect Citizens' Rights**

In contemporary public law, the foundation of the political structure, is represented by the distinction between legislative and executive, meaning, between the power that makes the law and the power that it performs. But the real division refers to the power that belongs to the Government to drive national policy using the administrative apparatus that he has, on the one hand and the freedom given to the legislature to control the action of the executive, on the other hand. (Tofan, 2008, p 218)

The control of the public administration is a necessity as old as the world; ancient writings revealed the fight against possible corruption of the public workers, and in the middle ages, Carol the Great-Charlemagne's *missi dominici* performed real inspection tours, regarding the complaints addressed by the population, conducting investigations, identifying abuses and reporting in front of the sovereign. (Dupuis, & Guedon, 2002, p. 28)

With us since the reign of Alexandru Ioan Cuza the question of intensifying control to stop abuses and the prince's incognito forays to surprise those who walked with "the candle small" remained in history. (Cernea, 2001, p. 15)

In the present, Romania's Constitution revised in 2003 establishes the concrete way in which the Parliament is controlling the government's activity and some authorities and institutions of the public administration or cooperates with them,

control which has as purpose the protection as efficient as possible of the citizen's rights. Parliamentary control is targeting therefore, the whole state activity and all public authorities, realizing through ways and adequate methods, and having a necessary, plenary and differentiated character. (Constantinescu, & Muraru, 1992, p. 134)

Regarding the fundament of the parliamentary control, in the light of the elements of comparative law, in the main doctrine there has been supported that the Parliament must supervise the method by which there are conducted the state's business, for it to maintain itself on the line the most appropriate to the aspirations of the whole national group, the force of the legislative assembly consisting in the power to supervise in its ensemble, the political and administrative action of the executive and even to interrupt it when it does not meet the desiderates of the nation. (Duculescu, & Călinoiu, 1997, pp. 364-367)

One form of control is formed of the information and reports presented to the two chambers of the parliament by the leaders of the central authorities of the public administration, regarding the whole developed activity. Informing the deputies and the senators is a prime condition for exercising the parliamentary control, because the data offered through this information determines the parliamentary initiative to start controls over the Government and of the other bodies of the public administration. The obligation to inform acts backwards as well – the members of the government have access to the parliament's work. The law provides that, if their presence is requested, their participation becomes even mandatory. Based on this information there can be adopted legislative measures.

Therefore, parliamentary control refers to the whole state activity and implies all the public authorities; these exercise, mainly, over the institution of the President and the Government, but also over other authorities such as the Supreme Council of National Defence, the National Bank, the Court of Auditors, the Romanian Intelligence Service and is done through reports and programs presented to Parliament by Research Questions, inquiries, reports, messages, parliamentary inquiries made by committees of inquiry by solving complaints addressed to the Chambers or through the Ombudsman.

Parliamentary control is exercised with respecting the regime of power separation. So, the Parliament can not substitute itself from the control exercised by other authorities of the public administration and neither can it pronounce over the

responsibility of a person, meaning it can not substitute itself from the attributions of a court. (Grădinaru, & Mihalcea, & Popescu, 2011, p. 147)

Another form of control is the one exercised by the parliamentary comities and is the most seen and efficient. Mainly, all parliamentary comities can perform a control, but these positions are, normally, given to commissions of inquiry or to special commissions. These special commissions if inquiry often have quasi judicial powers; summon witnesses who are legally bound to appear before the committee and answer. The Romanian Constitution consecrates committees of inquiry through art. 64 para. (4) (Muraru, & Tanasescu, 2009, p. 158).

Although the permanent comities don't have the right to cancel the documents of the authorities whose activity they analyze nor the right to give them mandatory dispositions, they present to the parliament, within which they function, reports, notices or proposals based on which it will adopt the appropriate measures towards the state administration authorities whose activity it analyses. From here, the special meaning and at the same time, the juridical consequences of the conclusions of the permanent committees towards the authorities of the public administration, without existing between them direct subordination relations. The conclusions of the permanent committee that are at the base of the measures that the Parliament takes towards the authorities of the public administration. (Popescu-Slăniceanu, & Enescu, 2012, p. 22)

Specific to the committees of inquiry is mostly the juridical statute of those hwared – what is similar to witnesses – and also the general requirement of the public authorities to support the committee, trough the presence of information and necessary. (Constantinescu, & Muraru, 1992, p. 252)

Parliamentary inquiries represent another parliamentary control method over the government and the public administration. Every Chamber constitutes its own permanent committees and can constitute inquiry committees or other special committees. The chambers can constitute their own common committees.

Another form of control is represented the control exercised trough questions and is realized trough a series of questions addressed by the deputies or senators of the Government, the Ministers and, in general, state bodies which require clarifications, explanations, information in relation to the activity under review by Parliament, or in relation to other social problems, cultural, legal, economic etc. More specifically, by the question members of the Parliament are requesting a

response if a fact is true, if the information is correct or if there was made a decision on a determined matter.

The question can be formulated in writing or verbally and can not regard problems of particular interest, information regarding the state in which there is a pending process on the role of courts and which may influence the settlement of these cases.

This method of control of the Parliament has proven, in time, very efficient; therefore, the one asked has the possibility to find out about the problems the citizens are confronting and to find solutions as soon as possible. Even though, I consider it would be opportune that the question, if it implies an urgent problem, to be debated in the parliament, and the adopted solution to also be applied in other administrative territorial units, if the case.

On inquiries these are considered to be more important than the question as the object of interpellations, is made only in writing by a parliamentary group or by one or more Members and submitted to the President of the Chamber to which it is referred to. By interpolation there may be required explanations regarding foreign policy or national of the Government. Concerning the question, interpolation has a more complex character, more complex under the aspect of the content, of the object, as well as the answer that it implies. Interpolation implies a vote and can have as consequence assuming the Government's responsibility in front of the parliament.

The Parliament exercises a control and through solving the citizen's petitions, addressed to one of the Chambers. This way, at the chamber of deputies, the comity for researching abuses and petitions, examines the received petitions and researches the abuses signaled through these petitions, conduct investigations in the noticed abuses in cases in which the Chamber disposes of that as a result of presenting, according to the regulation, of a request in front of the Chamber. (Grădinaru, & Mihalcea, & Popescu, 2011, p. 150)

Even if, as I have shown, parliamentary control has a political character, it doesn't mean that the law is not applied when there are observed violations of its. In some situations, the Parliament can take the measures necessary, such as: to request prosecution of the members of the Government, the dismissal of the implicated persons and even the dismissal of the Government through the motion of censure; it represents the last solution to which appeals the Parliament after, exhausting every other forms of control, gets to the conclusion that the government has not justified its trust with which it was invested, and has not fulfilled any objective of those

provided in the governing Program. In the context in which the Parliament exercises the control over the activity of the authorities of the public administration, there rises the question the Parliament by whom is it controlled?

Therefore, it is known the fact that, the Constitutional court has as main attribution checking the conformity with the Constitution of the laws emitted by the parliament, but, in case of ascertainment of nonconformity the only sanction that the Court can impose is declaring this legislation unconstitutional.

Also, the Constitution provides that the only situation in which the Parliament can be dissolved, as well as the competent authority able to dissolve it, is the President of Romania, after consulting the presidents of the two Chambers and the leaders of the parliamentary groups, if these have not granted the vote of confidence for forming the government in 60 days from the first request and only after rejecting at least two requests for investiture. Dissolving the Parliament is an exceptional situation, a sanction applied to the legislative in cases of serious violation of the constitutional provisions or when the activity of the state authorities is blocked.

Therefore, we can say that in case it doesn't fulfill its duties, the Parliament answers from a juridical point of view, juridical responsibility interfering only in front of, the Constitutional Court or the President of the State, which can dissolve the legislative authority under the circumstances described above.

With all these express dispositions of the fundamental law, there is not known until now in the history of post-december democracy of any case of Parliament dissolving and I appreciate that this fact is owed not to the flawless conduct of the legislative authority, but to the dispositions profoundly limitative regarding the application of this sanction(it is provided, therefore, a single case in which it can be dissolved).

These legislative provisions I consider not sufficient; cases in which, the Parliament can be dissolved I recommend be extended, expressly provided and detail every procedure of dissolving(terms, conditions, institutional route, etc.), and citizens, the country must be the one to have this initiative, because the parliament is elected by the people and not by the president. These problems of national interest can be:

- the suspension of the president;
- administrative regionalization or reorganization of the territory;
- switching to the European coin;

- integration in the European structures;
- concession and mineral resources, and much more.

Of course, organizing the referendums like a day to day fact would be the kind to substantially reduce the state budget, that is why I recommend that in other cases, to be possible to organize the electoral process through a magnetic card, procedure that wins more and more ground, also having the advantage of some minimal costs. Given that technology has evolved spectacularly, such a system is not hard to implement on a larger scale.

An extremely important institution in the political view of any state, the Parliament owns an essential role in developing laws, in the control and monitoring of the activity of different institutions and authorities of the central public administration, as well as in ensuring conformity of the normative acts with European dispositions or international and exactly in this context, appears as necessary a more rigorous control of the activity of this institution.

### **3. The Parliament's Contribution to Protecting and Promoting of Human Rights**

The interest towards the parliament and the role that it fulfills in the society is legitimate taking into account that it constitutes the representative authority of any nation. The Parliaments constitute today the widest democratic national forums and fulfill the role of elaborating laws, factors of responsibility of the public life, genuine elements for counterbalance against any attempt to diminish the human rights or the value of state institutions. (Popescu, 2011, p. 8)<sup>1</sup>

Making comparison between the legislative authority before 1989 and the present one, we can say that today's Parliament is more open and accessible to the citizens, it is administrated in a professional manner, but also the citizens have higher expectations regarding the legislative forum, being also interested of the aspects regarding the concerning probity, transparency, conduct of parliamentarians.

The legislative power owns today a key role in the protection of human rights; through the normative acts that it elaborates and through the principles after which it functions, the Parliament guarantees the application and respect of the laws on the whole territory of the state.

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<sup>1</sup> Available at: <http://www.unibuc.ro/studies/Doctorate2011August/Florica%20Ramona-Delia%20>.



Therefore, parliamentary committees are specialized in the field of human rights, and not only, and not only that, more specific, The Committee for human rights, cults and the problems of the national minorities which has as fields of activity the human rights and those of the citizen's, the problems of minorities, freedom of conscience, problems of the religious cults, freedom of expression by means other than through the media. Other committees also promote human rights in vast fields, such as: economical, financial, industrial, services, tourism, culture, art, sport, etc. the activity of these committees is not limited to finding of human rights violations, but debating bills or legislative proposals on human rights, thus contributing to improving the legal framework for the exercise of civil rights, moreover, these committees can even make proposals to amend the Constitution.

The special committees are committees formed for approving some complex law projects, for elaborating some legislative proposals, or for other purposes explicitly indicated in the decisions of forming the committee(decisions that also indicate the name, objectives and its structure)

Inquiry committees are made for specific needs of clarification of the causes and surroundings in which the events took place, or they have taken place actions with negative effects, mentioning that, this way, parliamentary inquiries can not have as object the investigation of deeds or activities that are the object of prosecutions or that are pending in courts of law. Inquiry committees are made for investigating such cases, for formulating some conclusions, for establishing responsibilities and for outlining some measures of remedy of the negative situations. (Pro Democracy Association)<sup>1</sup>

The Parliament, in its double quality of unique legislative authority and that of a representative of the people, has the obligation to transpose through laws the aspirations of the citizens, but also to protect their interests. It must be noted, the fact that, the Romanian Constitution fully consecrates the second title to fundamental human rights and freedoms and any other elaborated normative act has as objective the protection of fundamental rights and freedoms of certain social categories or disciplining of the behavior of the man in relation to his peers.

In January 2013, the Parliament adopted amendments to the statute of its members, modifying the procedure of rising the immunity in cases of perquisition, arresting or retaining of them and of prosecution of former ministers. There are provided extra measures, including the adoption of a conduit code. Among these measures

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<sup>1</sup> Available at <http://institutii.resurse-pentru-democratie.org/legislativul.php>.

there will have to be the adding of a term for every stage of the procedure in the Parliament and providing a complete justification when the Parliament refuses to remove the immunity. It is, also important to clarify the fact that the ANI remains the only authority charged with checking potential incompatibilities of the chosen and named public workers (The Raport MCV din 31.01.2013<sup>1</sup>).

The contribution of the Parliament in protecting and promoting the human rights is not limited only to that. It has the duty to ensure the conformity of the national legislation with the European and international legislation in the field of human rights in this mater, our country has approved a big part of the international conventions and treaties and has aligned the legislation to the *acquis* of the European Union.

In our country, the fact that the political majority of the Parliament is the one that sustains the Government seems to be understood as a wavier by the legislative to the important control function over the executive or to a formalization of it. I appreciate that it is important to put an accent on strengthening the role of the Parliament, as a raise of the role of the executive is felt in comparison with the legislative which constitutes a risk for democracy.

Therefore, the Parliament appears to us as an authority found in the citizen's service, created trough their will and to whom it subordinates, directly or indirectly, almost all institutions and authorities of the public administration, a fact that leads to raising its role in a democratic society. With all this, the level at which the Parliament of Romania is protecting the human rights, is mirrored most eloquently in the voting presence during the parliamentary elections and which from mandate to mandate is smaller.

#### **4.Conclusions**

The legislative power owns a key role in protecting and promoting of human rights, guaranteeing the application and respect of the laws on the whole territory of the state. The most eloquent example regarding the way in which are protected and promoted the human rights trough this authority, is represented by the activity submitted by the parliamentary Committees specialized in the field of human rights that are not limited only to find violations of the human rights, but debate law

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<sup>1</sup> Available at [http://ec.europa.eu/cvm/docs/com\\_2013\\_47\\_ro.pdf](http://ec.europa.eu/cvm/docs/com_2013_47_ro.pdf).

projects in this matter, having even the competence to make proposals to revise the Constitution.

The legislative process must be adapted to the requirements of the fundamental Law; the activity of elaborating normative must fit the limits and conditions established through the Constitution and respect the general interest, and what exceeds these limits requires that the Parliament has committed an illicit deed, and the normative act elaborated this way is unconstitutional, this fact that can produce dangerous results and even prejudice for the recipients of the law or for society in its ensemble, requires implies unconstitutionality of the legislative act in question and is sanctioned by the Constitutional Court. The Romanian Parliament needs a strategic analysis of the causes that determine or influences the pressure for change, lawmakers should make further efforts to improve the relationship with voters starting from a better understanding of their role of representing the citizens. However, the legislative power has today a key role in the protection of human rights by the laws that they develop and by principles after which it operates the Parliament ensures implementation and compliance laws throughout the state.

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\*\*\* Report from MCV 31.I. 2013 [http://ec.europa.eu/cvm/docs/com\\_2013\\_47\\_ro.pdf](http://ec.europa.eu/cvm/docs/com_2013_47_ro.pdf).